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OFFICE OF PETITIONS

In re Application of :  
Takako Araki :  
Application No. 10/520,280 : DECISION ON PETITION  
Filed: 27 January, 2005 :  
Attorney Docket No. 050042 :

This is a decision on the "PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT," filed 20 November, 2006.

The petition is GRANTED.

On 6 April, 2006, the Office mailed a non-final Office action, which set a three-month shortened statutory period for reply. In the apparent absence of a timely filed response, the application was held abandoned on 7 July, 2006. Notice of Abandonment was mailed on 13 November, 2006.

In the petition, applicant asserts that the practitioner did not receive the non-final Office action. Specifically, the practitioner asserts that the Office action was returned to the USPTO as undeliverable.

In the absence of any irregularity in the mailing of the non-final Office action, there is a strong presumption that the final Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the final Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and

docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the final Office action may have been lost after receipt rather than a conclusion that the final Office action was lost in the mail.

A review of the record indicates that the envelope in which the Office action was mailed was stamped "Insufficient Address" by the U.S. Postal Service. It is also noted that "No Address" is written below the address window on the envelope. As such, the showing of record is that there was an error in the mailing of the Office action mailed on 6 April, 2006, in that the address was not visible when the envelope was mailed. For this reason, the practitioner did not receive the nonfinal Office action of 6 April, 2006.

The petitioner has made a sufficient showing of nonreceipt of the Office action. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

As such, the holding of abandonment is **withdrawn**. The application is restored to pending status.

The petition is **GRANTED**.

The application file is being referred to Technology Center 2600 technical support staff for remailing of the non-final Office action mailed on 6 April, 2006. The period for reply will be reset from the mailing date thereof.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3231. Any other questions regarding the status of the application or the examination process should be directed to the Technology Center.



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